

STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
601 DELAWARE AVENUE  
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 73-17

July 24, 1973

CORPORATION INCOME TAX

- The Amendments made by House Bill No. 187, approved by the Governor on June 26, 1973, are explained below:

(1) Section 1903 (a) (3) - Under present law interest income from securities issued by the U. S. Government or its agencies or instrumentalities is exempted (eliminated) from Federal taxable income in computing taxable income for Delaware Corporation tax purposes. The amendment added by Section 1 of House Bill 187 provides that expenses allocable to such exempt income shall not be deductible. The disallowance will be accomplished by requiring that such related expenses be added back on Form 1100 in computing entire net income under Section 1903 (a).

(2) Section 1903 (c) - Under prior law, if the allocation and apportionment provisions under Section 1903 (b) resulted in assigning "more" than a fair and equitable proportion of the entire net income to Delaware, the Secretary of Finance, in his discretion, could permit the exclusion of one or more of the factors or the use of a separate accounting or other method to produce a fair and equitable result. In effect, this provision could be invoked and applied only where it was determined that the statutory formula operated to subject too large a portion of the taxpayer's entire net income to taxation by Delaware.

The amendment added by Section 2 of House Bill 187 makes this discretionary provision a two way street that may be invoked either by the taxpayer or by the Division of Revenue. It provides that if the Secretary of Finance, or his delegate, determines that the application of the allocation or apportionment provisions under Section 1903 (b) result in an unfair or inequitable proportion of the entire net income to Delaware (whether it be too large or too small a portion of the entire net income), then the Secretary may allow or require a corporation to exclude or alter the weight to be given to one or more of the factors (property, payroll, gross receipts) used in apportioning income, or the use of a separate accounting or other method to produce a fair and equitable result.

(3) Section 1910 (d) - Section 4 of House Bill 187 amends Section 1910 (d), relating to interest and penalties to be assessed in the case of an underpayment of the tax required to be paid when the tentative return is filed. Under present law, a taxpayer is excused

from paying penalties or interest on any underpayment of tentative tax if it can be established that the amount of the tentative tax paid was equal to either (1) the tax liability for the preceding taxable year, or (2) an amount equal to 70% of the tax that would be due if the income were computed by annualizing the net income realized for the first two months of the taxable year. Under the amendment made by this Bill, the second method of escaping the interest penalty is eliminated.

(4) Section 1913 (d) - Section 1913 (d) of present law, relating to penalties for failure to file returns, imposes a penalty of 5% of the amount of the tax liability per month, not to exceed 25% in total, in cases where the failure to file is not due to reasonable cause. However, the last paragraph of the Section specifically exempts tentative returns from the penalty. The amendment made by Section 5 of H. B. 187 eliminates this exception, and thus makes the penalty provisions applicable to failure to file tentative returns.

(5) Effective Date - The Amendments made by H. B. 187 (Chapter 113, Volume 59, Delaware Laws) apply to taxable years beginning on or after January 1, 1973.

  
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Director of Revenue

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